

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Petition for Declaratory Ruling)
that Microwave System Operated)
by The South Florida Water)
Management District Is a Public)
Safety Facility)

No. RM-8567

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REPLY COMMENTS OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

The issue before the Commission is straightforward: Is the South Florida Water Management District's microwave network used primarily "for operations involving safety of life and property" as that phrase is used in Section 94.59(f)? If so, Section 94.59(f) contemplates that the Commission will classify the system as a public safety system as the District has requested.

Two parties -- PCIA and UTAM -- have asked the Commission to find that the District's network is not used primarily for operations involving safety of life and property, but the arguments they make to support this request are absurd. First, although PCIA admits that the District's system is used primarily to prevent property damage and loss of life, it still asks the Commission not to classify the system as a public safety system on the theory that the system does not produce "substantial" savings in property or life.^{1/} PCIA is wrong. Each year, the District's system prevents

^{1/} PCIA Opp. at 5.

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tens of millions of dollars in property damage and saves countless lives by preventing flooding and water contamination as we explained in our petition.

PCIA also asks the Commission not to classify the system as a public safety system on the theory that the system does not reduce risks of damage or injury that are "imminent".^{2/} Once again, PCIA is wrong. During heavy rain, a malfunctioning gate or levee could cause massive flooding or massive aquifer contamination (or both) within only a few minutes of the malfunction.^{3/}

UTAM makes a different -- but equally ridiculous -- argument. Rather than contending that the District's system fails to eliminate risks to property and life that are "substantial" or "imminent", UTAM instead asks the Commission not to classify the system as a public safety system on the theory that the system's primary function is "monitoring and control" rather than protecting life and property.^{4/} But since the system's monitoring and control functions are performed for the explicit purpose of protecting life and property, the distinction UTAM asks the Commission to draw is meaningless. By definition, a system whose primary function is to monitor and control gates and levees in order to save property and

^{2/} Id.

^{3/} Not only are the system's regular operations designed specifically to save property and life, the system also is used in emergencies to perform special functions that are intended to save property and life. For example, in the aftermath of Hurricane Andrew, the communications capability provided by the system was used by the Federal Emergency Management Agency to assist with emergency delivery of medical supplies and drinking water.

^{4/} UTAM Opp. at 6.

lives is a system whose primary purpose is to save property and lives.

One final point: Contrary to the impression that both objectors seek to leave, classifying the District's microwave system as a public safety system in accordance with Section 94.59(f) will not set a precedent requiring the agency to classify the microwave systems of numerous utilities as public safety systems. While the core purpose of the District's system is to prevent damage to property and life, this is not the core purpose of microwave systems operated by the vast majority of utilities. Instead, the core purpose of those systems is to ensure the smooth flow of utility services like power.

Moreover, the damage or injury caused by a malfunction in the District's system is likely to be far greater than the damage or injury caused by a malfunction in a utility's system for two reasons. First, damage caused by a temporary power outage is likely to be reversible whereas flooding damage caused by a temporarily malfunctioning District system is irreversible. In addition, whereas utility customers most in need of power (e.g., hospitals and law enforcement agencies) often have a backup power supply available for use during temporary outages, little -- if anything -- can be done to prevent property damage or lost life in the event of flooding or water contamination caused by a malfunctioning District system.

The Commission's own records also provide evidence that the microwave systems of few, if any, utilities are used primarily to

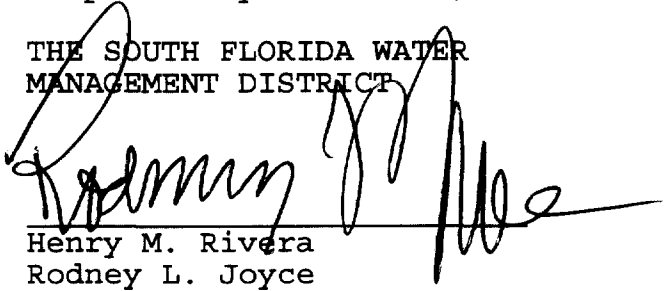
protect property and life within the meaning of Section 94.59(f). Although Section 94.59(f) was adopted more than two years ago, not a single utility has petitioned the FCC to classify its microwave system as a public safety system.

CONCLUSION

The Commission should classify the District's microwave system as a public safety system for purposes of Section 94.59 since the core purpose of that system is to save property and lives.

Respectfully submitted,

THE SOUTH FLORIDA WATER
MANAGEMENT DISTRICT



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CERTIFICATE OF SERVICE

I certify that a copy of the attached "Reply Comments of the South Florida Water Management District" was mailed by first class mail to each of the following on July 31, 1995:

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